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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of TINA and DUANE  
BAXLEY.

2d Civil No. B205503  
(Super. Ct. No. FL031098A)  
(San Luis Obispo County)

TINA BAXLEY,

Respondent,

v.

DUANE BAXLEY,

Appellant.

Duane Baxley appeals a post-judgment order of the family law court determining payment of a community liability not adjudicated by the judgment. (Fam. Code, § 2556.)<sup>1</sup> We affirm.

*FACTS AND PROCEDURAL HISTORY*

On September 5, 2003, Tina Baxley filed a petition to dissolve her marriage to Duane Baxley.<sup>2</sup> The couple had been married for 23 years 4 months and possessed significant community property, consisting of cattle ranches, livestock, real property, and

<sup>1</sup> All further statutory references are to the Family Code.

<sup>2</sup> We shall refer to the parties as "Tina" and "Duane," not from disrespect, but to ease the reader's task.

other assets. During the marriage, the couple lived on a 12-acre ranch on Geneseo Road in Paso Robles.

On February 22, 2002, the couple purchased 930 acres of land on Vineyard Canyon Road in San Miguel for \$1 million. The property was unimproved but for an older modular home. The Baxleys obtained an \$850,000 loan from Santa Maria Bank to refinance their original obligation on the property and to fund improvements. Tina moved to the property in April 2003, five months before the parties separated. By the time of trial, the property was improved by roads, fences, a water system, barn, corrals, a riding arena, and a new modular home. Tina's sons from a previous marriage moved to the property and assisted her ranching efforts.

Prior to trial, three appraisers appraised the Vineyard Canyon property, including the modular homes and other improvements, at values between \$1.8 million and \$2.65 million.

The family law court conducted two trials regarding the characterization, valuation, and division of community assets and liabilities. Following the second trial, the court awarded the Vineyard Canyon property to Duane at a value of \$2.6 million.

Soon after the court's decision, Tina and Duane engaged in post-trial and pre-judgment negotiations. As a result, on January 11, 2007, the parties submitted and the court entered a Stipulated Judgment that awarded Tina the Vineyard Canyon property at a value of \$2.6 million together with the property debt of \$830,795. The Stipulated Judgment also required Tina to pay Duane an equalizing payment of \$517,830.

Eights months after entry of the Stipulated Judgment and after Duane transferred title to the Vineyard Canyon property to Tina, she brought a motion seeking division of the \$61,426 modular home mortgage as an omitted liability. (§ 2556.) Duane resisted the motion and argued in part that the Stipulated Judgment and equitable principles precluded Tina's motion. The family law court granted Tina's motion and ordered Duane to pay \$30,713 to equalize the division of community property liabilities.

Duane appeals and contends that the family law court erred as a matter of law because 1) there is no evidence that the modular home debt is a community liability,

and 2) the parties agreed that the Stipulated Judgment finally adjudicated the division of all assets and liabilities.

## *DISCUSSION*

### I.

Duane argues that Tina did not present evidence to establish the community nature of the modular home obligation, such as, when she purchased the modular home or how she obtained the funds for its acquisition. (*In re Marriage of Grinius* (1985) 166 Cal.App.3d 1179, 1187 [loan proceeds acquired during marriage are only presumptively community property].) He adds that the court's brief ruling ("The debt attached to the modular home was not adjudicated and must be divided equally by the parties") did not first determine the character of the modular home obligation.

Section 2556 provides in part: "In a proceeding for dissolution of marriage, . . . the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment." Section 2556 relief pertains although the moving party knew of or discussed the asset or debt during the dissolution proceeding. (*Huddleson v. Huddleson* (1986) 187 Cal.App.3d 1564, 1569.)

In her motion to obtain adjudication of the obligation, Tina declared that she refinanced the Vineyard Canyon property, paid the equalizing payment to Duane, and paid the modular home obligation to Buckeye Retirement Co., Ltd. She described the obligation as an "unadjudicated community liability." Duane did not object to her declaration and cannot complain now. (*Perry v. McLaughlin* (1931) 212 Cal. 1, 6 ["Even though this testimony was incompetent, still, being admitted without objection, and treated by the parties as competent in the trial court, the question of its competency cannot be raised in the Appellate Court"].) "Even if the affidavit . . . contains hearsay, legal conclusions or other objectionable contents, failure to object on these grounds in the

trial court waives the defects, and the affidavit becomes competent evidence." (*In re Marriage of Kerry* (1984) 158 Cal.App.3d 456, 466.)

Moreover, following the second trial and prior to the Stipulated Judgment, Duane's attorney wrote the family law court and pointed out that the equalizing payment for the Vineyard Canyon property did not consider "the balance of the mortgage on the new [modular] home." Duane's theory at trial was that the modular home was a community asset and its mortgage was a community liability. Sufficient evidence supports the court's implied finding that the mortgage was a community liability.

## II.

Duane asserts that the omnibus provision in the Stipulated Judgment finally determines all community assets and liabilities. He points to this language: "We freely, intelligently, knowingly, and voluntarily enter into this Stipulation for Judgment on Reserved Issues intending, inter alia, to establish conclusively each party's ownership of property, responsibility for payment of debt and spousal support." The Stipulated Judgment further provides that "[a]ll property and debt" shall be distributed as stated in the "Propertizer Report."

The interpretation of a stipulated agreement that is later incorporated into a judgment is a question of law. (*John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 565.) We apply the general rules regarding interpretation of agreements to determine the meaning and effect of a judgment. (*Southern Pacific Pipe Lines, Inc. v. State Bd. of Equalization* (1993) 14 Cal.App.4th 42, 49.)

Examining the Stipulated Judgment as a whole, the parties did not intend the judgment to conclude the community liability regarding the new modular home. The Stipulated Judgment states that "[e]xcept as to the matters agreed to be modified," the parties accept the ruling and orders made by the family law court. Neither the Stipulated Judgment, the rulings and orders of the family law court, nor the Propertizer Report described the modular home liability. Moreover, the Stipulated Judgment does not refer to the modular home liability, although it specifically refers to the Vineyard Canyon property awarded to Tina at a value of \$2.6 million together with the real property

mortgage debt of \$830,795. The Stipulated Judgment also does not release or expressly waive any unadjudicated claims. Thus, the modular home obligation inadvertently was omitted from the Stipulated Judgment and the order of the family law court treating it as an omitted community debt is proper.

The order is affirmed. Respondent is to recover costs.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

E. Jeffrey Burke, Judge

Superior Court County of San Luis Obispo

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Misho, Kirker & Associates, LLP, Vanessa Kirker; Ernest Casacca for  
Appellant.

John F. Hodges; Daniel L. Helbert for Respondent.